

1 UNITED STATES DISTRICT COURT

2 EASTERN DISTRICT OF WASHINGTON

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5 UNITED STATES OF AMERICA,

6 Plaintiff,

7 v.

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9 RUBEN M. TRUJILLO, RICHARD  
10 GONZALEZ, SERGIO MEZA-MEDINA,  
11 DANIEL B. MIMS, and RENE  
12 RODRIGUEZ,

13 Defendants.

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No. CR-13-2109-FVS-1  
CR-13-2109-FVS-2  
CR-13-2109-FVS-3  
CR-13-2109-FVS-5  
CR-13-2109-FVS-6

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1 that the court can determine without a trial of the general issue."

2 **NO FUNDAMENTAL RIGHT TO GROW MARIJUANA**

3 Mr. Trujillo argues he has a fundamental right to grow marijuana  
4 for medical purposes, and this right is protected by the substantive  
5 component of the Due Process Clause of the Fifth Amendment. Virtually  
6 the same argument was considered and rejected by the Ninth Circuit in  
7 *Raich v. Gonzales*, 500 F.3d 850 (9th Cir.2007) (hereinafter "Raich  
8 II"). Writing for the court, Judge Pregerson concluded, "[F]ederal  
9 law does not recognize a fundamental right to use medical marijuana  
10 prescribed by a licensed physician to alleviate excruciating pain and  
11 human suffering." *Raich II* is binding authority. Thus, the Executive  
12 Branch's decision to proceed with the prosecution does not deprive Mr.  
13 Trujillo of a fundamental right.

14 **A 10-YEAR MANDATORY MINIMUM PRISON SENTENCE WOULD NOT VIOLATE THE  
15 EIGHTH AMENDMENT**

16 The Eighth Amendment has been interpreted to forbid "'extreme  
17 sentences that are grossly disproportionate to the crime.'" *United  
18 States v. Williams*, 636 F.3d 1229, 1232 (9th Cir.2011) (quoting *Graham  
19 v. Florida*, 560 U.S. 48, 60, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010)  
20 (quoting *Harmelin v. Michigan*, 501 U.S. 957, 1001, 111 S.Ct. 2680, 115  
21 L.Ed.2d 836 (1991) (Kennedy, J., concurring))). "There are two ways  
22 to succeed on a proportionality claim." *Williams*, 636 F.3d at 1232.  
23 One way is to show the disputed sentence is disproportionate "'given  
24 all the circumstances in the case.'" *Id.* (quoting *Graham*, 560 U.S. at  
25 59, 130 S.Ct. 2011). Another way "is to show that an entire class of

sentences is unconstitutionally disproportionate given the severity of the sentence, the gravity of the crime, and the type of offender." *Id.* at 1233. It is unclear whether Mr. Trujillo may bring an Eighth Amendment challenge at this stage in the proceedings. If he is, the only type of challenge he might be able to bring would be the second type. That is to say, the only type of challenge he might be able to bring would be one alleging a mandatory term of ten years imprisonment is categorically disproportionate to either of the crimes which he is alleged to have committed. The Ninth Circuit recently considered a similar argument in *United States v. Shill*, 740 U.S. 1347 (9th Cir. 2014). As in this case, the issue was whether a ten-year mandatory minimum sentence categorically violated the Eighth Amendment. The Ninth Circuit explained the Supreme Court had only applied categorical analysis in *Graham v. Florida*, 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010), and *Miller v. Alabama*, ---U.S. ----, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012). "Both *Graham* and *Miller*," said the Ninth Circuit, "expressly turned on two factors not present here: a juvenile offender and a sentence of life in prison without parole." *Shill*, 740 F.3d at 1356. Neither circumstance was present in *Shill*. Mr. Shill was an adult and he had received a mandatory ten-year prison sentence. That being the case, the Ninth Circuit could see no reason to engage in categorical analysis:

Neither *Graham* nor *Miller* suggest that a ten-year mandatory prison term is the type of sentencing practice that requires categorical rules to ensure constitutional proportionality. *Shill* is not a juvenile, and his ten-year mandatory minimum

1 sentence is in no way akin to the death penalty. Thus, we  
2 refuse to apply the categorical approach to Shill's ten-year  
3 mandatory minimum sentence.

4 740 F.3d at 1357. Unlike Mr. Trujillo's case, *Shill* involved a  
5 serious sexual offense. However, in refusing to employ categorical  
6 Eighth Amendment analysis, the Ninth Circuit attached no significance  
7 to the nature of the crime Mr. Shill had committed. Only two  
8 circumstances mattered. Mr. Shill was not a juvenile and he had not  
9 been sentenced to life in prison without the possibility of parole.  
10 As in *Shill*, neither of those circumstances is present in Mr.  
11 Trujillo's case. Consequently, a potential ten year prison sentence  
12 would not be categorically disproportionate in violation of the Eighth  
13 Amendment.

14 **FEDERAL REGULATION OF MARIJUANA DOES NOT VIOLATE THE NINTH  
15 AMENDMENT**

16 The Ninth Amendment states, "The enumeration in the Constitution,  
17 of certain rights, shall not be construed to deny or disparage others  
18 retained by the people." Mr. Trujillo vaguely argues federal  
19 regulation of marijuana infringes powers granted to the people of the  
20 State of Washington under the Ninth Amendment. His argument finds no  
21 support in Ninth Amendment jurisprudence. Federal appellate courts  
22 agree the Ninth Amendment "has not been interpreted as independently  
23 securing any constitutional rights for purposes of making out a  
24 constitutional violation." *Schowengerdt v. United States*, 944 F.2d  
25 483, 490 (9th Cir.1991). To the contrary, the Ninth Amendment  
26 provides a "'rule of construction,'" *Jenkins v. C.I.R.*, 483 F.3d 90,

1 92 (2d Cir.2007), or a "rule of interpretation." *Goodpaster v. City*  
2 *of Indianapolis*, 736 F.3d 1060, 1075 (7th Cir.2013) (internal  
3 punctuation and citation omitted).

4 **TENTH AMENDMENT**

5 Mr. Trujillo argues the Executive Branch of the federal  
6 government has commandeered the efforts of state law enforcement  
7 officers in order to subvert a State's decision to decriminalize the  
8 use of marijuana for medical purposes. In Mr. Trujillo's opinion,  
9 this sort of conduct is forbidden by the Tenth Amendment. He is  
10 mistaken. *See Raich II*, 500 F.3d at 867 and n. 17. The Ninth Circuit  
11 has repeatedly rejected Tenth Amendment claims challenging federal  
12 regulation of marijuana for medical purposes. *See United States v.*  
13 *Firestack-Harvey*, CR-13-24-FVS, 2014 WL 1744255 (E.D.Wash. April 30,  
14 2014) (listing cases).

15 **DEPARTMENT OF JUSTICE GUIDELINES**

16 The Department of Justice has issued memoranda that provide  
17 guidance to United States Attorneys who are charged with the  
18 responsibility of enforcing the Controlled Substances Act in states  
19 that allow the use of marijuana for medical purposes. *See, e.g.,*  
20 *United States v. Canori*, 737 F.3d 181, 183-84 (2d Cir.2013)  
21 (describing the "Ogden" and "Cole" memos). However, Mr. Trujillo has  
22 cited no authority supporting the proposition that such memos create  
23 enforceable rights.

25 **IT IS HEREBY ORDERED:**

26 Ruben Trujillo's "Motion [to] Dismiss for Violation of Due

1 Process and State Sovereignty" (ECF No. 280) is **denied**.

2 **IT IS SO ORDERED.** The District Court Executive is hereby  
3 directed to enter this order and furnish copies to counsel.

4 **DATED** this 24th day of July, 2014.

5  
6 s/ Fred Van Sickle  
7 Fred Van Sickle  
Senior United States District Judge